



STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MINUTES

February 13, 2006

A special meeting of the Public Employment Relations Commission was held at 10:00 a.m. in the Hearing Room at the Commission's Olympia office, 112 NE Henry Street, Suite 300, Olympia, Washington. Those present and participating were:

Marilyn Glenn Sayan, Chairperson
Pamela G. Bradburn, Commissioner
Douglas G. Mooney, Commissioner
Marvin L. Schurke, Executive Director
Majel C. Boudia, Confidential Secretary
Dario de la Rosa, Assistant to the Commission
Mark S. Downing, Compliance Officer
Kenneth J. Latsch, Operations Manager
Diane M. Tucker, Human Resource Consultant

Also present and participating:

Herb Harris, Washington Public Employees Association
John Dryer, OFM Labor Relations Office
Eric T. Nordlof, Public School Employees of Washington
Rodney Younker, Attorney at Law
Val Berry, Western Washington University
Diana Cline, Western Washington University

MINUTES OF PREVIOUS MEETING

The minutes of the meeting held on January 10, 2006, were approved at this meeting.

REPORT OF THE EXECUTIVE DIRECTOR

1. Mr. Schurke reported that 94 cases were filed during the month of January. This was a high intake for a January.
2. There were 72 cases closed in January. Overall productivity was down, but several significant decisions were issued.



3. There were 532 cases pending at the end of January. Mr. Schurke was pleased to report that the case-age statistics (cases over 90 days old, cases over 6 months old, and cases over one year old) were running considerably better than the previous year.
4. Mr. Schurke reviewed the "Red List" (cases ready for decision more than 90 days), which had 9 cases, and the "Yellow List" (cases ready for decision 45 - 89 days), which had 4 cases. Mr. Schurke noted that he had reviewed both lists with the management team at their meeting held February 7, 2006, and the Field Service Managers have been asked to focus on the "Yellow List" cases in order to get them out before they reach the "Red List".
5. Mr. Schurke reported on the Interest-Based Bargaining Training Program (IBB). There was a time when Walter Stuteville, Martha Nicoloff, and Kathleen Erskine were the only staff members providing this training, but we offered the opportunity to new staff members since 2001 and we now have several additional staff members up to speed as trainers. There has been increased clientele interest in IBB training, and an increased need for information about the service. Mr. Schurke gave Ms. Nicoloff and Claire Collins the go ahead to get prices on a tri-fold flyer from the State Department of Printing, with an intent to distribute the flyer at the LERA Conference in March 2006 and in mailings to clientele thereafter. Mr. Schurke emphasized that the intended audience for this flyer is labor and management practitioners (contrasting with the individual employee audience for the flyers on representation, unfair labor practice, and nonassociation cases) and he was inclined to order 5000 copies in a 3-color format. The Commission discussed the clientele interest in IBB training. Responding to Commissioner Bradburn's concern about alerting clientele about the availability of IBB training, Mr. Schurke explained that the flyer would provide information to a wide range of clientele and could be included with outbound mailings (as has been done with occasional newsletters issued by the agency). Responding to Commission concern that the number of copies printed should be in keeping with their projected use, Mr. Schurke said he would convey that concern to the committee members.
6. Mr. Schurke reported that he has been working on a complete revision of the agency Staff Manual, trying to capture institutional memory for the agency and provide guidance on the several new laws. The one-volume manual which has only existed in draft form will be broken into four small volumes:

- (1) chapters on history and office procedures; (2) chapters on representation and unit clarification hearings that will be easier for staff members to take with them in the field; (3) chapters on unfair labor practice and nonassociation cases that will be easier for staff members to take with them in the field; and (4) chapters on mediation, fact-finding, interest arbitration, and grievance arbitration. Good progress has been made toward completion of the project.
7. Mr. Schurke introduced Diane Tucker, and asked the Commission to review sample copies of a Practitioner Guide she is preparing. Mr. Schurke reminded the Commission that Ms. Tucker recently completed the pamphlets for individual employees concerning representation cases, unfair labor practice cases, and nonassociation cases. The intended audience for the Practitioner Guide is non-attorney advocates (union and employer staff members) and attorneys who do not practice before PERC on a regular basis. They are trying to put together a document that will be more user-friendly than the rules. Operations Manager Kenneth Latsch commented that the agency is trying to get good information out to its clientele, and that this project serves as a policy improvement required by the Government Management Accountability and Performance (GMAP) standards promulgated by Governor Gregoire. Ms. Tucker commented that the pro se pamphlets were used as a starting point for the Practitioner Guide, and that there will be a glossary to aid clientele in understanding terminology. Responding to a question from the Commission, Mr. Schurke said the Practitioner Guide would be on the PERC website, as well as on paper. Commissioner Bradburn commended the inclusion of blank pages in the back of the book for notes. Commissioner Sayan suggested that the Practitioner Guide be sent to legislative committee staffs. The Commission thanked Mr. Latsch and Ms. Tucker for their work on the two projects.
8. Copies of the agency Annual Report for the year ended June 30, 2005, were distributed to the Commission members. Mr. Schurke noted that some of the report is boilerplate from year to year, but pointed out the change of the "big picture" since 2002, as depicted on page 14 of the report. Mr. Schurke commented on the time projections for handling cases, changes of unfair labor practice trends with an increase in 2005, and evidence of the local government clientele coming back to life. The members signed the transmittal letter.

LEGISLATIVE REPORT

Mr. Schurke reported that the confirmation hearing for Chairperson Sayan will be held on Thursday, February 15, before the Senate Labor Committee. The appointments of Commissioner Bradburn and Commissioner Mooney are before the Rules Committee, but have not been sent to the floor as yet.

Mr. Schurke reported on legislation that is still alive:

- House Bill 2353/Senate Bill 6165 - Collective bargaining for family child care providers. This bill impacts 8000 to 10,000 individuals and small businesses who receive state subsidies under DSHS programs. The two versions are not the same. Mr. Schurke reviewed what has occurred in Illinois, Oregon, Iowa, Pennsylvania, and California, where there has been active competition between AFSCME and SEIU affiliates, and noted that the WFSE and SEIU are also competitors here. Mr. Schurke distributed and reviewed a timeline for this bill, which has increased from two columns to four since the January meeting. An emergency clause and the possibility of a runoff election are all significant variables. We are monitoring and provided a fiscal note.
- House Bill 2976 - Ratification of collective bargaining agreement between Public School Employees of Washington and Western Washington University. We have been monitoring this routine legislation, which results from the parties reaching agreement after the October 1 deadline under the PSRA.
- Senate Bill 6411 - Amends RCW 41.56.070 to allow 6-year collective bargaining agreements. The WSCCCE is pushing this bill. PERC staff pointed out that 6 years would be different from other Washington laws, which follow the NLRB practice of imposing a 3-year limit on "contract bar" effect but no limit on length of contracts.
- House Bill 2475 / Senate Bill 5724 - The SEIU is seeking legislation to overrule the Commission's decision on the independent providers case involving the shared living rule. We have been monitoring, and have provided a fiscal note.
- Senate Bill 6643 - Authorizes additional payroll deductions for state employees. We are monitoring because the State LRO says this will create additional bargaining issues we may have to resolve.
- Senate Bill 6660 - Suspends the October 1 deadline for PSRA contracts if parties are in mediation or factfinding. PSE is pushing this bill. We are monitoring for potential workload.

Mr. Schurke asked Operations Manager Kenneth Latsch to report on the agency getting permission to archive its files electronically. Mr. Latsch reported that PERC is one of the first agencies in state government to receive this approval. He credited Ed Heiser and Mitchell Nelson for doing a wonderful job in representing the agency in this process. Mr. Latsch said it will be interesting to watch as this new process unfolds. PERC's correspondence tracking system (CTS) began in 1997, and captures images of all documents filed with the agency. Approval to use CTS for archiving was given late in 2005, and was signed-off in early 2006.

COMPLIANCE DOCKET

Washington State University, Case 16502-U-02-4262 - Compliance Officer Mark Downing reviewed the history of the case, and reported that all compliance issues have been resolved. He recommended that compliance be accepted and the matter closed. By a motion made and seconded, the Commission accepted the recommendation.

Western Washington University, Case 18733-U-04-4760. Mr. Downing reviewed the history of the case. Representatives from both parties were in attendance. Eric Nordlof, representing Public School Employees of Washington, said he was frustrated with the documents provided by the employer, and believes there must be another document itemizing the \$203,737 in the "president's discretionary fund." Rod Younker, counsel for Western Washington University, said the employer wants to move on, and that it is trying to comply to Mr. Nordlof's requests. Chairperson Sayan asked if the question is, "What is the amount of interest from the package?" Mr. Nordlof clarified that he is asking for financial statements from the package, namely, what was spent. Mr. Younker noted Mr. Nordlof was previously provided with pre-audit statements, and that final audit documents are now available. These documents were distributed at the meeting. There was a discussion of the information pertaining to the discretionary fund. Chairperson Sayan asked if sharing underlying records would help. Mr. Nordlof said it would, and Mr. Younker indicated the information should be available showing transfer to payroll. Mr. Downing will follow up with the parties. Mr. Nordlof thanked Mr. Downing for his assistance in this matter.

RULES FOCUS GROUP

Mr. Schurke reported that Kenneth Latsch has been leading this effort and that the group has held five meetings. Commission members were given copies of a document listing all WAC chapters and rules which have been discussed, along with drafts of rule

amendments. The document was sent to all focus group members on February 9, 2006, and we are waiting for comments from them. Mr. Latsch indicated he is not expecting major changes, but that this process has yielded a suggestion for formation of another focus group with a mission limited to interest arbitration. In regard to WAC 391-25-140, which had been of particular interest to the Commission, Mr. Latsch reported that the focus group reviewed four options:

1. Do nothing, which would amount to there being an automatic "stay" of dismissal orders issued by the Executive Director, so as to keep the "maintain status quo" and "shutdown of bargaining" requirements in effect during the period for appeal and during the consideration of an appeal is filed.
2. Amending the rule to permit employers and incumbent unions to resume normal activities after a dismissal "regardless of a petitioner's appeal rights or pending appeal.
3. In addition, the amended rule could permit a petitioner to seek reinstatement of the rule during the processing of an appeal.
4. Additionally, the rule could be amended (with or without options 2 and/or 3) to permit a party to seek Commission approval clearing the way for "global" changes on a case-by-case basis.

It thus appears the Commission will not have any consensus recommendation on this subject from the Rules Focus Group.

Mr. Schurke added there were two areas in the February 9 document which may require emergency rules:

- On page 33, the document addresses amendments to regulate a fact-finding process for civil service employees, which could be needed in upcoming contract negotiations.
- On page 38, the document addresses amendments concerning non-association cases for state civil service employees, which are already being processed by the agency. The PSRA differs from the other laws by having alternative payments flow through the union, and the existing rules omit that concept.

Dario de la Rosa stated that the Commission may need to adopt an emergency rule to implement the election process for child care providers who work in private residences (House Bill 2353/Senate Bill 6165), to eliminate required posting of notices on employer premises. The rule would need to be adopted by the April 10 Commission meeting to conduct the election in a timely manner.

Mr. Latsch reported on recent contacts from clientele (particularly the PSRA clientele) which arose after the last Focus Group meeting. Clientele are asking if they need to send a copy of their (large) collective bargaining agreement with each case filed. The concept of taking notice of a database of pre-filed contracts is being discussed. Herb Harris, representing the Washington Public Employees Association, commented on the repetitive filing of PSRA contracts, which are limited to the seven master contracts in general government plus coalition contracts covering most of the community colleges and The Evergreen State College. Mr. Schurke noted that the repetitive filing of the same contract doesn't come up very often in local government. Mr. de la Rosa noted that concerns about reopeners and amendments would need to be worked out. Responding to a question from Commissioner Mooney, Mr. Latsch and Mr. de la Rosa agreed that the "database" contracts could made be available on the agency website.

The Commission thanked Mr. Latsch for his presentation, and thanked Mr. de la Rosa and Mr. Schurke for their comments.

COURT DOCKET

This was nothing to report on the Court Docket.

COMMISSION DOCKET

Ths Commission docket was reviewed in detail, and the status of each case was discussed.

The Commission reviewed letters sent by Mr. Schurke on two cases where he was named as a respondent, to inform the parties that he was recusing himself from those and related cases. Unfair Labor Practice Manager Mark Downing had sent deficiency notice letters to the parties in those cases.

Mr. Latsch asked the Commission for advice concerning a request for a staff arbitrator for a dispute between a union and an employee. Mr. Schurke said he was hesitant to assign a staff member because we may not have statutory authority to expend state resources for such a case. Following a discussion, the Commission agreed that this request would not fall under the agency jurisdiction.

OTHER BUSINESS

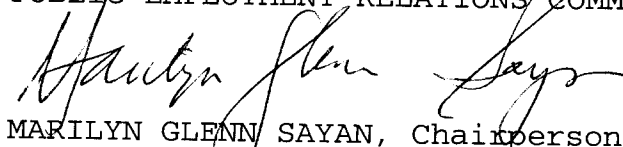
Herb Harris commented that the focus group meetings have been very informative. He is looking forward to further review of the interest arbitration process and the contract issue.

The Commission members toured the Olympia office to view framed photographs recently installed. Mr. Schurke reported that support staff member Lorelee Perkins completed the project, and that the theme is to depict people doing work of the types that the agency regulates. The photos were available through the Washington State Historical Society and Washington State Archives. The Commission extended their thanks to Ms. Perkins.


ADJOURNMENT

There being nothing further to come before the Commission, the meeting was then adjourned.


PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


PAMELA G. BRADBURN, Commissioner


DOUGLAS G. MOONEY, Commissioner

ATTEST:


MARVIN L. SCHURKE, Executive Director